



To: Mayor & Council
BC 6.02.10

MEMORANDUM

TO: Fredericksburg City Council

FROM: Kathleen Dooley, City Attorney *K. Dooley*

DATE: June 2, 2010

RE: Amending the City Code to permit designation of university student housing as tax exempt

ISSUE:

Shall City Council amend the City Code to permit the designation of student housing as tax exempt?

RECOMMENDATION:

Yes. The ordinance amendment does not, in and of itself, exempt any property from taxation. It does open a process for the case-by-case consideration of an exemption application by the City Council.

BACKGROUND:

General legal principles:

Effective January 1, 2003, Virginia Constitution Article X, "Taxation and Finance," Section 6, "Exempt property," was amended to delegate to local governing bodies the authority to designate or classify property used by its owner for religious, charitable, patriotic, historical, benevolent, cultural or public park and playground purposes as tax exempt. The Virginia General Assembly implemented this new Constitutional provision through the adoption of Virginia Code §58.1-3651, which authorizes a local governing body to exercise its new authority through the adoption of ordinances after public hearing. The statute sets forth a number of criteria that the governing body shall consider before adopting a tax exemption ordinance.

The Fredericksburg City Council exercised its authority through the adoption of City Code section 70-92.1, permitting the governing body to exempt property by designation. This City Code section incorporates the criteria required by Virginia Code §58.1-3651, such as whether the owner organization is exempt from taxation pursuant to §501(c) of the Internal Revenue Code and whether the organization provides services for the common good of the public. In addition, §70-92.1 provides that property occupied or used by any person as a dwelling or for other personal use would not be eligible for exemption. This is a local criterion, not required by the Virginia Code.

The City Council has rejected exemption applications that violate the residential criterion in the past. But the Council has also granted an exemption to an institutional residence, the New Visions halfway house for female ex-offenders that formerly operated on William Street. The Council exercised its discretion in that instance to characterize the use as institutional or charitable and not strictly residential. Now, the University of Mary Washington Foundation has asked the Council to consider student housing as an “educational use” and not strictly residential. The best way to permit this consideration is through amending the City Code.

Virginia Code §58.1-3618 characterizes the literary, scientific and educational purposes of incorporated charitable non-profit foundations as “charitable or cultural.” In other words, there is a precedent in Virginia statutory law for considering an educational use of property to be “charitable or cultural.” It is at least an open question whether student apartments would be considered a “charitable or cultural” use of property under the strict construction of the statute. However, the designation process affords the legislative body the authority to grant an exemption where entitlement under the stricter terms of the classification statute might be doubtful. The proposed ordinance amendment would permit the Council to consider applications on a case-by-case basis. If Council determined that the student housing was essentially an educational use and if Council decided in its discretion to designate the property as tax exempt, then it would be empowered to do so.

Pending applications to designate student housing tax exempt:

The University of Mary Washington Foundation is a non-profit corporation formed for the exclusive purpose of supporting the educational mission of the University of Mary Washington. The Foundation has created Eagle Housing, L.L.C., a Virginia limited liability company with a single member – the Foundation. Eagle Housing owns the University Apartments at 1106 William Street, and it is developing the new student-housing component of Eagle Village Phase I, known as “Eagle Landing.”

The student housing owned by Eagle Housing, LLC is operated by the University of Mary Washington through an exclusive Operating Agreement, whereby the University offers the housing to its students through its Residence Life office. Housing units are assigned by Residence Life to UMW students according to University policies and procedures. Residents pay rent to the University, and are classified as “residential”

students for University purposes. Residents are required to purchase a University meals plan, and the University staffs the apartments with upper class resident advisors.

Under these circumstances, and with the proposed City Code amendment, Council could consider whether the use of these properties is essentially educational in nature. If so, does Council wish to grant the tax exemption designation? The City Manager's memo in support of the applications sets forth their compliance with the remaining criteria established by the City Code.

FISCAL IMPACT:

The fiscal impact of the City Code amendment in and of itself is zero. Each decision by Council to exempt property through the designation process will have a quantifiable fiscal impact.



MOTION:

June 8, 2010

Regular Meeting

SECOND:

Ordinance No. 10-

RE PERMITTING THE DESIGNATION OF STUDENT HOUSING FOR REAL ESTATE TAX EXEMPTION, BY AMENDING CITY CODE CHAPTER 70, "TAXATION," ARTICLE IV, "REAL ESTATE TAXES," SECTION 70-92.1, "EXEMPTIONS FOR DESIGNATED REAL PROPERTY OWNED BY CERTAIN NONPROFIT ORGANIZATIONS"

ACTION: Ayes:

Nayes:

FIRST READ: _____ SECOND READ: _____

IT IS HEREBY ORDAINED by the City Council of the City of Fredericksburg, Virginia, that City Code Section 70-92.1 shall be amended as follows:

SEC. I. Introduction.

Effective January 1, 2003, Virginia Constitution Article X, "Taxation and Finance," Section 6, "Exempt property," was amended to delegate to local governing bodies the authority to designate or classify property used by its owner for religious, charitable, patriotic, historical, benevolent, cultural or public park and playground purposes as tax exempt. The Virginia General Assembly implemented this new Constitutional provision through the adoption of Virginia Code §58.1-3651, which authorizes a local governing body to exercise its new authority through the adoption of ordinances after public hearing. The Fredericksburg City Council exercised its authority through the adoption of City Code section 70-92.1, permitting the governing body to exempt property by designation. However, §70-92.1 provided that property occupied or used by any person as a dwelling or for other personal use would not be eligible for exemption.

The purpose of this ordinance is to make the tax exemption designation process available for property in use as student housing which is essentially educational in nature and owned by an organization that is otherwise eligible for tax exemption. Nothing herein classifies such property as automatically tax exempt; instead, the purpose of this ordinance is to make the designation process available for property in student housing use, for governing body consideration.

SEC. II. City Code Amendment.

Fredericksburg City Code section 70-92.1 is hereby amended as follows:

Sec. 70-92.1. Exemptions for designated real property owned by certain nonprofit organizations.

(a) The city council may by designation exempt from taxation any real property owned by a nonprofit organization that uses such property solely for religious, charitable, patriotic, historical, benevolent, cultural, or public park or playground purposes. No exemption shall be granted to any organization except under the following conditions:

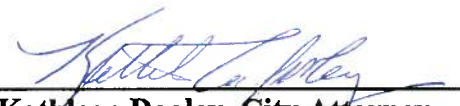
- (1) The organization shall have no rule, regulation, policy or practice that unlawfully discriminates on the basis of religious conviction, race, color, sex, or national origin;
- (2) No personal property of the organization shall be exempt from local taxation;
- (3) The organization must currently own real property in the city;
- 4) The property for which the exemption is requested shall not be occupied or used by any person as a dwelling or for other personal use, *except for property operated by a public university exclusively for student housing*; and
- (5) The exemption shall only apply to the specific parcel of land for which the exemption is sought and not to any property that may be acquired in the future by such organization.

[subsections (b) through (i) are not amended.]

SEC. III. Effective Date.

This ordinance shall be effective immediately.

Approved as to form:


Kathleen Dooley, City Attorney

Clerk's Certificate

I, the undersigned, certify that I am Clerk of Council of the City of Fredericksburg, Virginia, and that the foregoing is a true copy of Ordinance No. 10- duly adopted the City Council meeting held _____, 2010 at which a quorum was present and voted.

***Tonya Lacey,
Clerk of Council***